TAN CHWEE LIAN v. LEE BAN SOON

[C.A. (Rose C.J., Buttrose and Wee Chong Jin JJ.) January 3, 1963]

[Singapore — Civil Appeal No. 18 of 1962]

Damages — Brain injury — Liability admitted — Future earnings — Loss of — Trial judge not taking into account — Assessment of general damages — English decisions — Caution to be exercised before following.

In this case the plaintiff, a girl aged 9 years, suffered a severe brain injury as the result of being struck down by a lorry at a pedestrian crossing. The defendant admitted liability and the learned trial judge assessed general damages at $40,000. The plaintiff appealed.

Held: an appellate court should be reluctant to disturb a finding of this nature, but in this case as no consideration was given to the question of the loss of future earnings, namely that for all practical purposes the girl was unemployable and her chances of marriage were virtually non-existent and not merely affected, a sum of $60,000 general damages would be appropriate. *Millikin* v. *Smith*, (1) not followed.

Per curiam: "That case (*Millikin* v. *Smith*) must, of course, be considered in relation to the English and not the Singapore background with its attendant labour problems and shortage of work. In the United Kingdom there are special institutions and facilities for the aid, assistance and training of cripples both physical and mental which do not exist here. It was argued by Mr. Cashin that the Singapore economy was not sufficiently diversified for a cripple to find employment. In considering these matters it is necessary, in my view, to exercise caution before following too closely the English decisions."

Case referred to:—

(1) *Millikin* v. *Smith* [1951] W.N. 422; Kemp and Kemp Vol. 1, 2nd Edn., p. 224.

COURT OF APPEAL.

H. E. Cashin for the appellant.

L. A. J. Smith for the respondent.

Buttrose J. (with whom **Rose C.J.** and **Wee Chong Jin JJ.** agreed): In this case the plaintiff a girl of 9 years old suffered a severe brain injury as the result of being struck down by a lorry at a pedestrian crossing. At the trial the defendant admitted liability and the special damages were agreed at $764.80. The sole issue was as to the amount of general damages to which the plaintiff was entitled. The learned trial judge in his very thorough judgment after carefully reviewing the evidence, assessed the general damages at $40,000.

From that decision the plaintiff now appeals. The material portion of the learned trial Judge's findings may be summarised briefly as follows:—

Before the accident the plaintiff was a perfectly ordinary normal child and full of life. After the accident she was a completely different person. She is now a difficult girl to get on with and is moody, irritable and subject to fits of temper. If she is compelled to do something that she does not like, she goes outside and beats the dogs. She requires constant supervision. She has made no progress at a school to which she was sent after the accident and was always at the bottom of the class and had to be withdrawn. She is now mentally retarded and is a spastic. It is considered that her condition is unlikely to improve.

The learned trial Judge also stated that her future employment when she is older will be very limited but there was no reason why she could not work as a domestic servant. Her chances of marriage he thought would be affected.

It was argued on behalf of the plaintiff that there was evidence to show that the girl could never earn a living and her chances of marriage were now non-existent and that the learned trial Judge failed to take these factors into account.

The evidence of Professor Ransome, who was called on behalf of the plaintiff, was, *inter alia*, that she could not be an amah and could never work alone and that she was quite irresponsible.

The learned trial Judge apparently based his award on the English case of *Millikin* v. *Smith* (1) which is, in many respects, not dissimilar to the present. In that case, the plaintiff was a little boy just over four years. He sustained two fractures of the skull, causing a permanent brain injury. As the result the boy's personality changed; he became irritable, excitable, unreliable. He would suddenly lose control and attack people for no reason. There was no real ground for supposing that his condition would improve. He would have great difficulty, when grown up in holding down any job, even one of an unskilled nature. The defendant did not enter an appearance and judgment was signed in default of appearance. A master assessed the plaintiff's general damages at £5,000 (the equivalent of slightly more than $40.000). The Divisional Court dismissed the plaintiff's appeal against this award. The Court of Appeal dismissed the plaintiff's appeal from the Divisional Court indicating that while they considered the award on the low side and would have given more they were not prepared to say that it was so much below the sum they would have awarded that it could be said to be wholly erroneous.

That case must, of course, be considered in relation to the English and not the Singapore background with its attendant labour problems and shortage of work. In the United Kingdom there are special institutions and facilities for the aid, assistance and training of cripples both physical and mental which do not exist here. It was argued by Mr. Cashin that the Singapore economy was not sufficiently diversified for a cripple to find employment. In considering these matters it is necessary, in my view, to exercise caution before following too closely the English decisions.

The learned trial Judge came to the conclusion that there was no reason why the girl could not work as a domestic servant, but that seems to me to be flying in the face of Professor Ransome's evidence to which I have referred. It

is clear from his judgment that he accepted the plaintiff's medical evidence and rejected the defendant's.

In these circumstances, I am forced to the conclusion that little or no consideration was given to the question of the loss of future earnings.

One is always reluctant to disturb a finding of this nature by a Judge of first instance and although the award is on the low side and I would have given more, I would not be disposed to interfere but, for the reasons I have stated, I have come to the conclusion that the learned trial Judge did not take into account, or sufficiently take into account, that the girl was, for all practical purposes, unemployable and that her chances of marriage were virtually non-existent and not merely affected.

Taking these matters into consideration together with all the other factors to which the learned trial Judge has referred, I consider a sum of $60,000 would be an appropriate award in this case.

The appeal must accordingly be allowed and the judgment of the learned trial Judge set aside and judgment entered for the plaintiff for $60,764 and costs both here and in the Court below.

Appeal allowed.

Solicitors: *Rodyk & Davidson; L. A. J. Smith.*

CHUA SIN TENG & ORS. v. PUBLIC PROSECUTOR

[A. Cr. J. (Ismail Khan J.) January 5, 1963]

[Seremban — Criminal Appeal No. 20 of 1962]

Road Traffic — "Certificate" of passing test of competence to drive — Whether certificate required by law — Who should sign certificate — Role of Registrar of Motor Vehicles — Motor Vehicles (Driving Licence) Rules, 1959, rr.6, 7, 10.

Penal Code, ss.193, 197, 417 — Driving tester issuing false certificate in material point — Whether certificate to be issued by law — Meaning of "certificate" — Intentionally inducing government to be deceived — Abetment of.

The 1st appellant, a driving tester employed by the Road Transport Department, Negri Sembilan, was charged under section 197 of the Penal Code for cheating to wit by knowingly issuing a false Certificate of Passing a Test of Competence to drive and for intentionally inducing the government to issue a driving licence which would not have been issued if the government had not been so deceived, an offence punishable under section 417 of the said Code. The 2nd and 3rd appellants were charged with aiding and abetting the said offences. On conviction the appellants appealed. It was argued *inter alia* on appeal that (i) the charge did not state that the act of granting a licence to the complainant had caused or was likely to cause damage or harm to the government and even if it did such act had not caused or was likely to cause such harm or damage, (ii) the learned President misdirected himself in treating the complainant as an agent provocateur and not as an accomplice and (iii) a certificate of competence to drive signed by a tester and forwarded pursuant to Rule 10 of the Motor Vehicles (Driving Licence) Rules, 1959 is not a certificate required by law to be given as required by section 197 of the Penal Code.

Held: (1) the granting of the licence to the complainant would not damage the reputation of the government, in fact the harm done was too remote;

(2) as the complainant had "concurred" in the criminal designs for a time he should be treated as an accomplice and his evidence was corroborated;

(3) the certificate of competence to drive is a certificate required by law to be given or signed. Rule 10(1) read with Rule 6(3) imposes an obligation on the tester to give or sign a certificate as he is the person who has conducted the test and has to be satisfied as to the competence of the applicant.

Cases referred to:—

(1) *In re Krishnan* A.I.R. 1948 Mad. 268.
(2) *Tan Yook Suan* v. *Reg.* [1954] M.L.J. 116.
(3) *Reg.* v. *Mullins* 3 Cox C.C. 526.
(4) *Teja Singh & Anor.* v. *Public Prosecutor* [1950] M.L.J. p. 71.
(5) *Rex* v. *Baskerville* [1916] 2 K.B. 658.
(6) *Birendra Nath Chatterjee* v. *Umananda Mukherjee* A.I.R. 1926 Cal. 258.
(7) *Mahabir Thakur & Anor.* v. *Emperor* A.I.R. 1917 Cal. 466.
(8) *Public Prosecutor* v. *Dr. J. G. N. Fonseka* [1958] M.L.J. 102.

MAGISTRATE'S CRIMINAL APPEAL.

Edgar Joseph, Jr. for the 1st appellant.

Kam Woon Wah for the 2nd appellant.

Mohd. Salleh bin Abas (Deputy Public Prosecutor) for the respondent.

Ismail Khan J.: The first appellant was charged as follows:—

That you on the 13th September, 1961, at the Road Transport Department, Seremban, in the State of Negri Sembilan did issue a Certificate of Passing a Test of Competence to drive in form (D.L.18) bearing serial No. 243418 which certificate is required to be given by law, namely Rule 10 the Motor Vehicles (Driving Licence) Rules, 1959 knowing that such certificate is false in material point, to wit, "LEE KONG YONG I/C NS. 104566 has been examined and has passed the test of competence to drive class 'B' only" and that you thereby committed an offence under section 197 of the Penal Code and punishable under section 193 of the Penal Code.

That you on the 15th September, 1961, cheated the Government of the Federation of Malaya by deceiving it to believe that one LEE KONG YONG (I/C NS. 104566) has been examined and has passed the test of competence to drive class 'B' vehicle, which information you knew to be false or did not believe to be true and thereby intentionally induced the aforesaid Government to issue a driving licence to the aforenamed LEE KONG YONG, which licence would not have been issued if the aforesaid Government had not been so deceived and that you thereby committed an offence of cheating punishable under section 417 of the Penal Code.

The second and third appellants were each charged with aiding and abetting the said offences by the first appellant under section 109 of the Penal Code. A third charge against the second and third appellants for an offence punishable under section 162 of the Penal Code was stayed.

All three appellants were convicted.